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Supreme Court of the United States

OCTOBER TERM 1944

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No. 1289

UNITED STATES *ex rel.* JACK WOLF ZUCKER,
Petitioner,
against

WINSLOW OSBORNE,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT**

JULIEN CORNELL,
Attorney for Petitioner.



TABLE OF CONTENTS

	PAGE
Statement of the Case	1
Opinion Below	2
Jurisdiction	2
Statutes, Rules and Regulations.....	3
Question Presented	5

CASES AND AUTHORITIES CITED

Robert Boland Brooks v. United States of America, 147 Fed. 2d 134, Cert. den., No. 1044, October Term 1944, April 23, 1945; U. S.	5, 6
Executive Order No. 8675 (6 Fed. Reg. 831).....	3
Judicial Code (28 U. S. C. Sec. 347)	
Section 240	2
Public Law 28, 77th Congress, 1st Session, Ch. 40, p. 28	7
Public Law 630, 77th Congress, 2nd Session, Ch. 450.	7
Selective Service Regulations (6 Fed. Reg. 6825)....	3
Section 652.14	3
Section 653.1(a)(b)(c)	3
Section 653.3(e)	4, 7
Section 653.12	4
Section 653.2(c)	4
Selective Service Rules (7 Fed. Reg. 508).....	3
“Selective Service in Peacetime” and “Selective Serv- ice in Wartime,” Gov’t Printing Office.....	4n
Selective Training and Service Act of 1940 (50 U. S. C. App. §§ 301 et seq.).....	3, 5
Section 5g	3, 6
Section 10	3



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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

The petitioner, Jack Wolf Zucker, respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit to review the determination of that Court made on February 19, 1945 (R. 26) affirming an order of the United States District Court for the Western District of New York (R. 19) dismissing a writ of *habeas corpus* obtained by the petitioner.

Statement of the Case

Petitioner having registered under the Selective Training and Service Act of 1940 was classified in Class IV-E

as a conscientious objector and was assigned on September 1, 1943, to a work camp for conscientious objectors known as Civilian Public Service Camp No. 46 at Big Flats, New York, where he has since been required to perform manual labor (R. 2, 3). The petitioner obtained from the United States District Court for the Western District of New York, a writ of *habeas corpus* (R. 8) on his petition (R. 2-7) in which he set forth that he was confined to the work camp in violation of the Selective Training and Service Act of 1940, in that the rules and regulations issued by the Director of Selective Service, pursuant to which he was so confined, exceeded the authority of the Act in various respects hereinafter set forth. Because of the alleged illegality of his confinement under rules and regulations unauthorized by the statute, the petitioner prayed that he be released from custody. The District Court ordered the dismissal of the writ (R. 19, 20) which order was on appeal affirmed by the Circuit Court of Appeals (R. 26).

Opinions Below

The District Court opinion dated January 20, 1944, is reported at 54 Fed. Supp. 984 (R. 11-19). The opinion of the Circuit Court of Appeals for the Second Circuit dated February 2, 1945, affirming the order of the Trial Court is reported at 147 Fed. 2d 135 (R. 24, 25).

Jurisdiction

Petitioner submits that this Court has jurisdiction to review the judgment of the Circuit Court of Appeals affirming the order of the Trial Court under Section 240 of the Judicial Code (28 U. S. C. Sec. 347).

Statute, Rules and Regulations

The statute involved is the Selective Training and Service Act of 1940 (50 U. S. C. App. §§ 301 *et seq.*) and in particular § 5g thereof which provides that conscientious objectors shall be assigned to "work of national importance under civilian direction", but contains no further specification of conditions under which they are to be assigned. § 10 empowers the President to prescribe rules and regulations and to create and establish a Selective Service system.

Pursuant to the authority of the foregoing statute, the President by Executive Order No. 8675 (6 Fed. Reg. 831) authorized the Director of Selective Service to establish work projects for conscientious objectors and to make the necessary assignments to such work, and generally to supervise and control the projects.

Under the authority so delegated to him by the President, the Director of Selective Service promulgated regulations (6 Fed. Reg. 6825) and devised a system of rules for governing the work camps for conscientious objectors (7 Fed. Reg. 508). These rules govern all the work camps for conscientious objectors including the camp where petitioner is confined. In summary, the Regulations provide that a conscientious objector shall be engaged in "work of national importance under civilian direction" during the existence of the war and six months immediately thereafter unless sooner released, § 652.14; that the projects deemed by the Director to be work of national importance are referred to as "civilian public service camps", all such camps to be under the immediate direction of named civilian technical agencies of the Government but the responsibility and authority for supervision and control being retained by the Director of Selective Service, § 653.1 (a), (b) and (c); that the pay of assignees shall not be

more than \$5.00 per month except that not more than six per cent. may receive not more than \$7.50 per month—plus subsistence, clothing and equipment, § 653.3 (e). The assignees must report to the camp to which they are assigned, must remain there until released or transferred elsewhere “by proper authority”, and must comply with camp rules, § 653.12.

The camps to which conscientious objectors have been assigned since the initiation of the entire system, believed to exceed 50 in number, are supported by the historic “peace churches”—Society of Friends, Mennonites and Brethren—and operated under the express authority and supervisory control of the Director by the “National Service Board for Religious Objectors”, pursuant to § 653.2 (c) of the Regulations. The official history of these camps is contained in the first report of the Director of Selective Service for the period 1940 to December 8, 1941, especially at pages 191-2, 196-7, and in the second report of the Director, pages 264-5, 267-8.*

The camp sites and the attendant projects selected by the National Service Board for Religious Objectors and approved by the Director are chiefly abandoned former Civilian Conservation Corps camps. The first of these camps was selected in March 1941. In May 1941 the “Camp Operations Division” of the Selective Service System was established at the System headquarters and in that month the first group of IV-Es were ordered to report to a camp. At the end of the second year of System operations, December 5, 1942, as noted in the second report of the Director, 43 of these camps were in operation, with 19 additional projects at hospitals to which some conscientious objectors were assigned. As of January 31, 1944, 6,794 IV-Es had been assigned to the camps, of whom 3,948 were there engaged in work projects and 2,846,

* “Selective Service in Peacetime” and “Selective Service in Wartime,” Gov’t. Printing Office.

about 42%, had been transferred out to work on the "special projects".

The technical direction of the work at these 43 camps is under various civilian agencies of the Government (see Director's second report, p. 268); chiefly, the Forest Service, the Soil Conservation Service and the National Park Service which together were operating 30 of these camps with some 4,500 of the total of 4,845 assignees.

QUESTION PRESENTED

The petitioner is unlawfully confined at a compulsory labor camp without pay, dependency allowance or privileges authorized by Congress, in violation of the Selective Training and Service Act of 1940.

The petitioner's contention that the compulsory labor camps provided for conscientious objectors by rules and regulations of the Director of Selective Service are not authorized by the statute and are in violation thereof, has previously been presented to this Court in the petition for writ of certiorari in the case of *Robert Boland Brooks, petitioner, v. United States of America, respondent*, No. 1044, October Term 1944, which was denied on April 23, 1945; U. S. . . However, it may be that this Court was unwilling to consider such a contention as justifying the issuance of a writ of certiorari in the *Brooks* case because he had not yet been subjected to the rules and regulations complained of, since he refused to obey an order of his draft board to report at a camp for conscientious objectors and was prosecuted for having refused to report. The Circuit Court of Appeals in the *Brooks* case based its affirmance of his conviction for refusing to report to the camp in part upon the ground that he had not yet been subjected to the rules and regulations governing the camps and was, therefore, not in a position to complain that they

are unlawful. *Brooks v. U. S.*, 147 Fed. 2d 134, 135. The petitioner here, unlike the petitioner in the *Brooks* case, has been subjected to the rules and regulations governing the camps since he reported to the camp when ordered to do so and has since continuously remained there (R. 3). Petitioner therefore presents as the reason for allowing a writ of certiorari in this case the same contentions which were previously presented in the *Brooks* case, but may not have been considered by the Court on the ground that Brooks was not in a position to raise them.

The statute requires only that conscientious objectors be assigned to "work of national importance under civilian direction" (Selective Training and Service Act of 1940, § 5g). There is no specification in the statute, nor any indication in the debates in Congress or committee reports to show the Congressional intention with regard to the system of work projects to which conscientious objectors were to be assigned. Complete discretion is vested in the President to establish work projects for conscientious objectors. However, he is not thereby authorized to subject petitioner and others similarly situated to a system of peonage which would otherwise be unlawful and has no necessary relation to the ends sought to be achieved by the statute. It may reasonably be assumed that Congress intended that conscientious objectors should be assigned to work under conditions which would, as nearly as possible, approximate the conditions of military service. This is apparent from the statute itself which directs that conscientious objectors be assigned to work of national importance "in lieu of induction" into the armed forces.

An examination of the work camps which have been provided, at one of which petitioner is confined, reveals that they constitute a system of compulsory labor camps, similar in many respects to the concentration camps which were a familiar feature of the Nazi government of Germany. Although Congress has specifically authorized for con-

scientious objectors, pay, allowances and such other privileges as are available to the armed forces (Public Law 28, 77th Congress, 1st Session, Ch. 40, p. 28; Public Law 630, 77th Congress, 2nd Session, Ch. 450), the Director of Selective Service has refused to provide any such pay, allowances or other privileges. The \$5 per month which is paid to the petitioner under Section 653.3 of the regulations is designed merely to furnish essential subsistence and cannot be regarded as compensation. The other features of the camps, which are revealed by the rules and regulations summarized above, make it clear that the conditions under which conscientious objectors are confined are far more burdensome than the conditions of military service. Whereas men assigned to the armed forces are well paid, their families provided for and such privileges granted to them as are compatible with military discipline, all such advantages are denied to the conscientious objector, whose condition approaches slavery when compared with the conditions of military service. It is obvious that segregation of conscientious objectors in labor camps, performing made work, without pay or other privileges, is not necessary. They could readily be assigned to individual jobs, as in England.

It is submitted that Congress did not intend to authorize any such drastic system of labor camps for conscientious objectors, and that the system to which petitioner has been subjected is unauthorized by the statute. The treatment accorded to petitioner and other conscientious objectors is so unfair and discriminatory as compared with the treatment of men inducted into the armed forces, that the intention of Congress is violated and petitioner's confinement is unlawful.

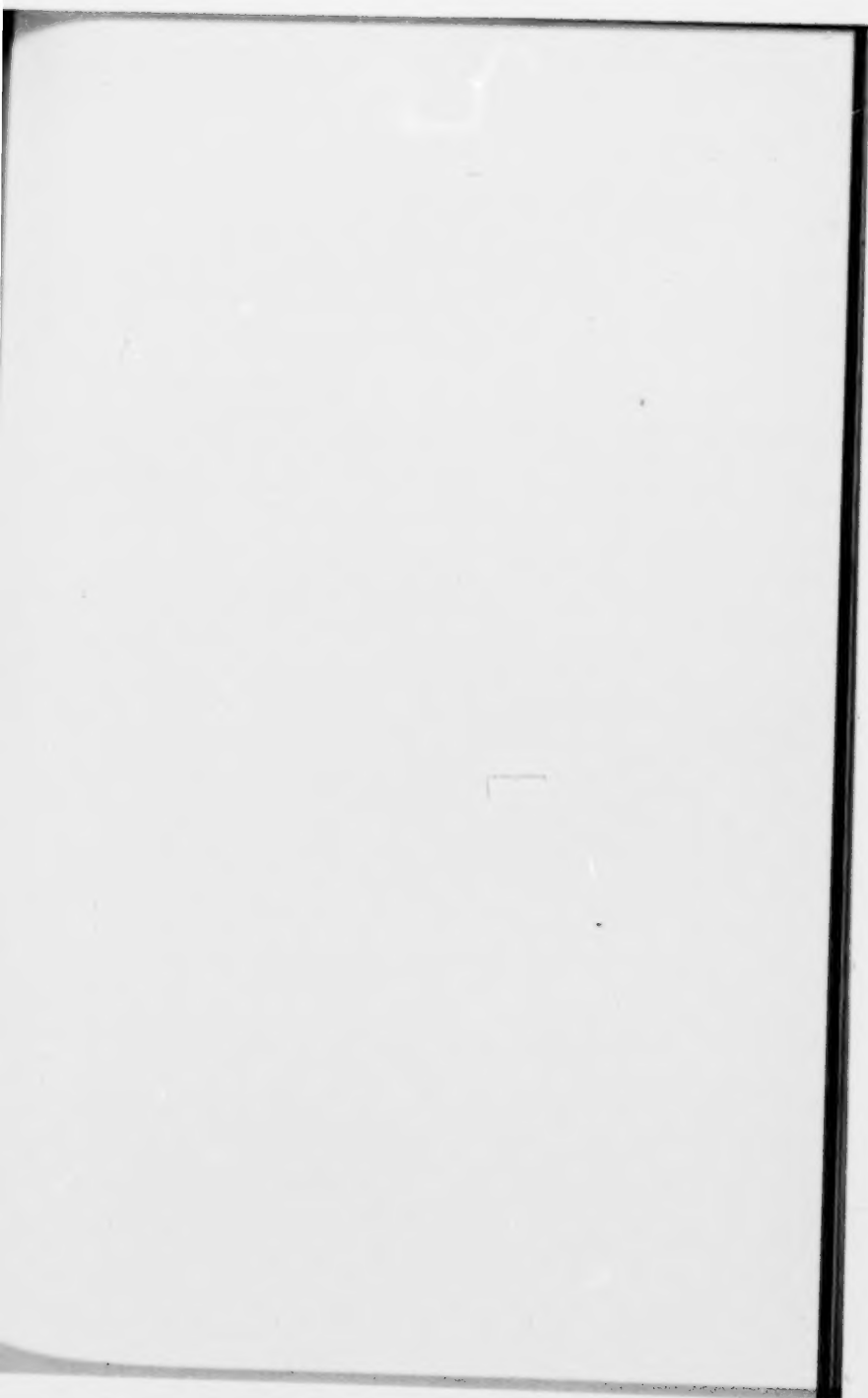
WHEREFORE, petitioner prays that a writ of certiorari be issued out of and under the seal of this Court directed to the Circuit Court of Appeals for the Second Circuit

commanding that Court to certify and send to this Court a transcript of the record of the proceedings herein and that the order of the District Court for the Western District of New York be reversed by this Court, and for such other and further relief in the premises as this Court may deem just and proper.

Respectfully submitted,

JACK WOLF ZUCKER,
Petitioner.

By JULIEN CORNELL,
Attorney for Petitioner,
15 William Street,
New York 5, N. Y.



In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1289

UNITED STATES EX REL. JACK WOLF ZUCKER,
PETITIONER

v.

WINSLOW OSBORNE, DIRECTOR, CIVILIAN PUBLIC
SERVICE CAMP NUMBER 46, BIG FLATS, NEW
YORK

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT*

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

On October 7, 1943, petitioner filed in the United States District Court for the Western District of New York a petition for a writ of habeas corpus seeking his release from a Civilian Public Service Camp. The petition alleged that, at his request, petitioner was classified as a conscientious objector to combatant and noncombatant military service; that pursuant to the order of his local board he reported to Civilian Public Service Camp No. 46; that his work at the camp is "to aid in planting trees and soil conservation;" that

(1)

he receives no pay for his services; and that his assignment to work of national importance is unconstitutional and is unauthorized by the Selective Training and Service Act of 1940. (R. 2-6.) The writ issued (R. 8) and respondent filed a return (R. 9-10), alleging that petitioner was properly classified and assigned to perform work of national importance under civilian direction in lieu of military service. On the basis of the pleadings and argument, the district court rendered an opinion sustaining the validity of petitioner's detention (R. 11-18) and accordingly dismissed the writ (R. 19-20). Upon appeal to the Circuit Court of Appeals for the Second Circuit, the order of the district court was affirmed, *per curiam* (R. 24-25).

In this Court petitioner contends (Pet. 5-7) only that the system of Civilian Public Service Camps for conscientious objectors is unauthorized by the Selective Training and Service Act. He argues that the provision of Section 5 (g) of the Act requiring the assignment of conscientious objectors "to work of national importance under civilian direction" does not empower the President and the Director of Selective Service to segregate such registrants in "labor camps" and deny to them the pay and other benefits accorded to members of the armed forces. As petitioner concedes (Pet. 5), the same contention was advanced upon petition for a writ of certiorari in *Brooks v. United States*, No. 1044, certiorari de-

nied, April 23, 1945. This contention, in one form or another, has likewise been unsuccessfully urged upon this Court in *Gormly v. United States*, No. 220, October Term, 1943, certiorari denied, 320 U. S. 753; *Roodenko v. United States*, No. 947, certiorari denied, March 26, 1945; *Kramer v. United States*, No. 1034, certiorari denied, April 23, 1945. In our briefs in opposition in those cases we have set forth the considerations which in our view demonstrate that on the merits petitioner's contention is untenable. For the argument in support of our position, the Court is respectfully referred to those briefs.

Accordingly, we respectfully submit that the petition for a writ of certiorari should be denied.

HUGH B. COX,
Acting Solicitor General.

TOM C. CLARK,
Assistant Attorney General.

ROBERT S. ERDAHL,
IRVING S. SHAPIRO,
Attorneys.

JUNE 1945.